

FILED '07 MAR 19 11:02 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL HIMEBAUGH,

Plaintiff,

Civil No. 06-6041-TC

v.

FINDINGS AND
RECOMMENDATION

GUY HALL, et al.,

Defendants.

COFFIN, Magistrate Judge.

By Order (#22) entered January 29, 2007, plaintiff was ordered to show cause in writing by February 12, 2007, why defendants' unopposed Motion to Dismiss (#18) should not be allowed. Plaintiff was advised that failure to show cause as directed would result in the dismissal of this action for failure to prosecute. The court's order was returned as un-

deliverable.

On February 14, 2007, the Clerk of the Court was directed to re-mail the court's Order (#22) to plaintiff at his current address. In addition, the show cause date was extended for fourteen days - until March 5, 2007.

Plaintiff has not responded to the court's order or otherwise contacted the court since August 1, 2006.

Defendants' un-controverted motion and exhibits establish that plaintiff did not exhaust administrative remedies with respect to his claims in this case.

Defendants' Un-enumerated 12B Motion to Dismiss (#18) should be allowed. Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003); Woodford v. Ngo, 126 S.Ct. 2378, 2006 LEXIS 4891 (June 22, 2006). In addition, plaintiff's claims should be denied and this action should be dismissed for failure to prosecute. Plaintiff's "Un-enumerated 12B Motion to Dismiss" (#20) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have

ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 19 day of March, 2007



Thomas M. Coffin
United States Magistrate Judge